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Supreme Court of the United States

OCTOBER TERM 1946

JOE JOHNSON ROBERTS

v.

MARGARET ELIZABETH ROBERTS

AND UNITED STATES OF AMERICA

BRIEF OPPOSING THE GRANTING OF WRIT OF CERTIORARI

STATEMENT OF THE CASE

Joe William Roberts was the son of Joe Johnson Roberts. He entered the Armed Service of the United States. On the 14th day of May, 1942, a National Life Insurance policy in the sum of $10,000 was issued to him. His father was named beneficiary. On the 19th

day of December, 1942, at Jacksonville, Florida, he married his childhood sweetheart, Margaret Elizabeth Davison, and between the 19th and 24th of December, 1942, the beneficiary of said policy was changed from Joe Johnson Roberts to Margaret Elizabeth Roberts. On January 10th, 1944, the insured died in line of duty. Claim was made for the insurance benefits, which was denied. William W. Perry, Jr., a former Navy lieutenant, in his deposition stated that he was married on the same day and at the same place that Joe William Roberts was married, and that Perry also had National Life Insurance; that shortly after the marriage, sometime between the 19th and 22nd of December, 1942, he went to Jacksonville, Florida, with Joe Johnson Roberts, Margaret Elizabeth Roberts and his own wife, the reason for their making the trip being to change the beneficiaries of their insurance and to change the beneficiaries on their gratuity bonus and other forms that needed to be filled out on account of their marriage. (R. 3). He further testified that his wife and Mrs. Roberts accompanied them on the trip to Jacksonville; that they left the two ladies in Jacksonville while they went out to the air station; that they went to the offices of the Officers' Records and went up to the counter and told the lady at the counter that they wanted to make out a change on their insurance and on the bonus and gratuity pay. (R. 4). He testified further that he saw the name Margaret Roberts written into the form changing the beneficiary on the life insurance. (R. 5) The person in charge said they would put the papers in the proper channels. (R. 20) This particular form never reached the Veterans Bureau, or if it did was misplaced.

The Government, in cross-examination of Lt. Perry, introduced certain documents which clearly proved that Roberts and Perry were at the place stated between the 19th and 24th of December, 1942. (R. 6-7) Confidential statements in the handwriting of Joe William Roberts were introduced, one dated December 15th, 1943 and the other September 24th, 1943, both written after his marriage, in which the decedent stated that his wife Margaret was the beneficiary. In addition thereto, there was introduced an officer's personnel record in the handwriting of the decedent, in which he stated his wife was the beneficiary of his policy of insurance. (R. 62-63).

A jury was waived at the trial and the District Court found for the defendants. On an appeal to the Circuit Court of Appeals for the Fourth Circuit, the case was reversed and remanded. (For a more complete statement, see the opinion of Judge Soper. R. 106).

QUESTION INVOLVED

The sole question involved is whether or not the beneficiary of the policy had been changed to that of Margaret Elizabeth Roberts, the widow of the decedent.

BRADLEY v. U. S.

Much has been said about the case of Bradley v. United States et al, C.C.A. Tenth Circuit, which was decided May 30th, 1944, a re-hearing was denied on July 5th, 1944, and a petition for writ of certiorari was denied. The case is reported in 142 F. 2d, 573. Briefly,

the Bradley case holds that a confidential personnel report addressed to United States Air Port wherein officer indicated that wife was beneficiary of insurance, could not be treated as an effectuation of his intention to change the beneficiary so as to permit recovery of insurance by wife. That was the sole issue in the Bradley case. Mr. Justice Murrah, who wrote the opinion, ably reviews the law applicable to the change of beneficiaries in life insurance policies, but to repeat, the sole issue in that case was as above stated, which is etntirely different from the facts of this case. In reviewing the law, it is said in the Bradley case that an intent to change the beneficiary in a life insurance policy if standing alone is not sufficient; that in addition thereto the insured must do all that he could be reasonably expected to do to effectuate the change. Many authorities are cited in support thereof. In the case before this court, clearly the insured intended to change the beneficiary and did all that he could be reasonably expected to do to effectuate the change. Therefore, there is no conflict between this case, decided by the Fourth District, and that of the Bradley case, decided by the Tenth Circuit, and counsel for the petitioner herein has erroneously stated the facts on page 2 of the petition for a writ of certiorari. Moreover, Judge Soper in writing the opinion for the court (R. 111) used this language: "We are in accord with the views expressed in Bradley v. United States." How then is it possible for there to be a conflict in these circuits?

OPINION OF DISTRICT COURT

The opinion of the District Court (R. 63) is erroneous, and the court's attention is respectfully called to said opinion. (R. 65) The eighth line of the second paragraph the court says: "At that time he said to his mother that he had this large insurance policy which would take care of them." This was not the testimony of the mother It was so argued by counsel for petitioner herein and the court was confused between what the mother actually testified and what counsel stated the testimony to be. Counsel for the petitioner admitted in his argument in the Circuit Court of Appeals that this was not an accurate statement of the facts, and Judge Soper, in delivering the opinion of the Circuit Court of Appeals, comments on this. At the bottom of page 109 of the Record and top of page 110: "The stenographic report of the mother's evidence does not contain this statement."

The District Court show further confusion when in its opinion (R. 66) the District Judge says: "* * * as to the execution of these personnel statements, which I do not undertake to explain nor to understand * * *". If the District Judge did not understand this important portion of the evidence, which clearly proved an intent to change and was corroboration of Lt. Perry, then, of course, the findings of the District Court should not be afforded the same degree of presumption of correctness usually given in such cases.

VITAL PROOF OF CASE IN FORM OF DEPOSITIONS AND EXHIBITS

It is respectfully submitted that the necessary elements of Mrs. Roberts' case was made out through depositions of Lt. Perry and the depositions of Lt. Perry's wife, and the confidential statements introduced as Exhibits 5, 6 and 7, and where this is true, the verdict of the lower court does not carry the same weight as where a witness appeared and testified before the court. See Nashua Mfg. Co. v. Berenzweig, 39 F. 2d, 896.

ARGUMENT

It is respectfully submitted that the writ of certiorari should be denied. Reasons are assigned as follows:

(a) No special or important reasons exist as set forth in Rule 38, Sec. 5, Sub. Sec. (b) of this court.

(b) There is no conflict between the decision rendered by the Fourth Circuit Court of Appeals and the Tenth Circuit Court of Appeals.

(c) The District Court's verdict is plainly wrong.

(d) The able opinion of Judge Soper, of the Circuit Court of Appeals for the Fourth Circuit, is plainly just and clearly and fairly decides the issues between the litigants.

(e) The law applicable to a decision of this case is well settled.

(f) There are no novel questions involved nor is it a case of first impression.

(g) Litigation involving Government insurance policies is not a new subject. Thousands of actions were brought since World War I, and the law as to changing of beneficiary has become well established. Based on the law as it is, information was given out to the different commanding officers, who in turn passed this on to the men of their command, and to now change the law would lead to confusion and inevitably lead to persons becoming beneficiaries under National Life Insurance policies who were never intended by the insured to be beneficiaries.

We respectfully submit that the petition for writ of certiorari should be denied and the decision of the Circuit Court of Appeals for the Fourth Circuit be allowed to stand as rendered.

Respectfully submitted,

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